IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 165 of 2001

Reserved on: 29.12.2007

Decided on: 31.12.2007.

State of H P Appellant.

Versus

Gurmedh Bodh and another Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? Yes.

For the appellant : Mr Som Dutt Vasudeva, Addl. Advocate General.

For the respondent : Mr. B. C. Negi, Advocate.

Surinder Singh, J .

The respondents were tried and acquitted for the offence under Section 353, 506 read with Section 34 of the Indian Penal Code which has been assailed in the instant appeal by the State.

Heard and gone through the record of the case.

In brief, the prosecution case is that on 11.4.1994, at about 9.45 a.m., Inspector Amar Singh complainant was on security duty at Bhunter Airport . The respondents came to the Airport to take the helicopter flight to Stingri in Lahaul. The complainant noticed the respondents exchanging some articles from the window of the terminal Hall. When he raised the objection, the respondents indulged into the arguments which ensued into the scuffle. It is alleged that the respondents caught hold the complainant from the neck of the shirt and tore it off. The buttons were also broken. They had also tried to

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

snatch the service revolver but in the meantime, Head Constable Gurdas Ram and Constable Bhup Singh intervened and relieved the complainant from their clutches. Inspector Anant Ram, was the Incharge of the Security, he reached there on hearing the noise. It was also informed that respondent Chhering Fungchok was boarding the helicopter in place of one Shri Nirmal Singh as disclosed by Mohar Singh Clerk of the office of Deputy Commissioner, Kullu.

On the report of the complainant, the case was registered. The shirt was taken into possession. The site plan was prepared by the Investigating Officer. The copies of the posting and transfer orders of the complainant were taken into possession along with the list of passengers who were to travel by the helicopter. After completing the challan, the case was presented in the Court for the trial of the respondents.

Both the respondents were charge-sheeted as aforesaid but they pleaded not guilty and claimed trial. At the end of the trial, the respondents were acquitted and their acquittal has been challenged in this appeal.

Legally, to prove the charge under Section 353 of the Indian Penal Code, it is incumbent upon the prosecution to prove, the following ingredients of the offence:

(i) There must be assault or use of criminal force;

(ii) Such assault or use of criminal force must have been made on a public servant, and

(iii) It must have been on a public servant-

a) While he was acting in the execution of his duty or

b) With intent to prevent or deter him from discharging his duty, or

c) In consequence of anything done or attempted to be done by him in discharge of duty.

Thus, the public servant must be acting in execution of his duty or must be discharging his duty as a public servant. The execution of the duty is the sine quo non for the application of the aforesaid Section.

In the instant case, the prosecution has failed to prove that the complainant was deputed for the said duty on that day or he was executing his duty as such public servant at Airport Bhuntar. Except his posting orders Exhibit PW3/A as the Incharge of the Airport Bhuntar, the prosecution has not brought anything on record. Though PW1 Amar Singh has stated that he was posted at Airport Bhuntar but he has no where stated that at the relevant time he was deputed on security duty at the Airport. Whereas Anant Ram (PW10) has claimed himself to be the Incharge of Airport Bhuntar and on 11.4.1994, he was on duty along with about eight personnel of his staff at the terminal hall. He has stated that the respondents had picked up some quarrel with the complainant. Bhup Singh and Head Constable Gurdass Ram relieved the complainant from their clutches but he did not say that the respondents had torn off the shirt of the complainant or they had tried to take possession of his service revolver nor any written report was made to him. Had the respondents done anything wrong, they would have been apprehended by the Police officials on the spot there and then. But in the instant case, the respondents though were present but were not detained on that day whereas, they were apprehended on 3.6.1995 after about a year but no explanation has been given for such a delay.

The another allegation that one of the respondents was boarding the helicopter in the name of some other person, which the complainant came to know later on. To substantiate this version, the prosecution has also examined PW11 Inspector Jagat Ram who had placed on record the flight list containing the names of the passengers who were to board the helicopter from Bhuntar to Stringri in Lahaul but is it surprising to note that the names of both the respondents finds mentioned in the said list at Sr. No. 18 and 25. Thus, this allegation, has been proved to be false. Further Gurdass Ram (PW2) has stated

that security check up of the respondents was done in terminal Hall and the name of the respondents was cleared to board the flight and in cross–examination he took U-turn that one of the respondents was a proxy passenger but this fact stands falsified from the list aforesaid. Constable Bhup Singh (PW5) in his cross-examination has stated that after the security check up, the passengers do not come to the terminal hall and the alleged incident had taken in the terminal hall. This version of the witness is contrary to the statement of PW2 Gurdas Ram and the complainant.

It is also pertinent to note that the report of the alleged incident was lodged in Police Post Bhuntar at 11.15 a.m. on 11.4.1994 with respect to the incident which is alleged to have taken place at 9.40 a.m. to ASI Gulam Mohammad (PW8) on the basis of which the FIR Exhibit PW8/B was lodged in Police Station, Kullu which is at a distance of 9 km only from the Airport. But it reached the Chief Judicial Magistrate Kullu at 4.00 P.M. and his office is located just beside the police station. This means that the complainant had lodged the report after much deliberations against the respondents which further raises a doubt on its authenticity.

In nut shell, it appears that the real genesis of the prosecution story was suppressed and there is no legal evidence on record or Rapat Rojnamcha to show that the complainant was deputed for the security duty and at the relevant time he was performing his duty at Bhuntar Airport. Therefore, in these circumstances, the prosecution cannot be said to have proved the case against the respondents beyond a shadow of reasonable doubt. Thus, the respondents were rightly acquitted by the trial Court.

In result, the impugned judgment of acquittal does not require any interference. Accordingly, the appeal is dismissed.

(Surinder Singh)
Judge.

December 31st, 2007.
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